



NATIONAL POLICY CONSENSUS CENTER
Hatfield School Of Government

MEMORANDUM

TO: Statewide TMDL Policy Advisory Committee Members and Alternates
FROM: Jessie Conover, Oregon Consensus (OC)
SUBJECT: Action Items from January 29, 2014 Meeting
DATE: February 24, 2014

This memo follows up on the January 29, 2014 meeting of the Statewide TMDL Policy Advisory Committee held at the Oregon Department of Forestry Headquarters in Salem, Oregon. The memo includes the following: proposed future meeting dates, identified action items and brief summaries of key topics discussed.

UPCOMING MEETINGS

Please take note and calendar the following meetings.

Meeting	Date	Location
Statewide TMDL Policy Committee Meeting #5	May 2014 (date to be determined)	ODF Headquarters, Salem
<i>Additional Statewide TMDL Policy Committee Meetings</i>	<i>TBD</i>	<i>TBD</i>

ACTION ITEMS

Action Items	Who	Date
1. <u>Action Items</u> <ul style="list-style-type: none">• Prepare draft Action Items memo and distribute to committee members for review	OC (Jessie) with DEQ	Complete
2. <u>Information Follow-up</u> <ul style="list-style-type: none">• Provide links to NOAA docket website	DEQ/OC	With Action Items Memo

3. <u>Scheduling Future Meetings</u> <ul style="list-style-type: none"> • Send out proposed May meeting date 	DEQ	As soon as possible
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Committee Members and Alternates Present: Peter Daugherty (Oregon Department of Forestry), Ed Armstrong (Environmental Quality Commission), Dave Jepsen (Oregon Department of Fish and Wildlife), Michael Campbell (Stoel Rives), Stephanie Eisner (Association of Clean Water Agencies), Chris Jarmer (Oregon Forest Industries Council), Penny Machinski (Associated Oregon Industries), Allison Hensey (Oregon Environmental Council), Curtis Martin (Oregon Cattlemen's Association), Gary Springer (Board of Forestry), Marilyn Rice (Soil and Water Conservation Commission), Mike Freese (Oregon Farm Bureau), Jenniffer Bakke (Hancock Forest Management), Emily Ackland (Association of Oregon Counties), Bobby Levy (Oregon Fish and Wildlife Commission), Alyssa Mucken (Oregon Water Resources Department), Mary Scurlock (Sierra Club), Jim James (Oregon Small Woodlands Association), Ray Jaindl (ODA), Tracy Rutten (League of Oregon Cities), Kyle Abraham (ODF), Judith Callens (ODA), Kay Teisl (Oregon Cattlemen's Association), Eric Geyer (OFIC)

Other Attendees: Cheryl Martin (Oregon Cattlemen's Association), Amanda Punton (Oregon Department of Land Conservation and Development), Helen Rueda (US EPA), Elizabeth Howard (Oregon Cattlemen's Association), Jennifer Wigal, Deb Sturdevant (Department of Environmental Quality), Joe Hobson (Oregon Farm Bureau)

Project Team Members Present: Greg Aldrich, Gene Foster, Karen Tarnow (Department of Environmental Quality), Jessie Conover (Oregon Consensus)

Facilitation: Turner Odell (Oregon Consensus)

Meeting Notes

Key topics and themes:

During the fourth meeting of the Statewide TMDL Policy Advisory Committee, attendees: (1) heard updates on several water quality programs/activities, including updates on litigation and the Mid-Coast TMDL process, (2) heard presentations on DEQ's revisitation of the temperature standard, ODA's water quality strategic initiative, and water quality trading, and (3) discussed revisiting and implementing a temperature water quality standard. The meeting agenda and meeting materials (including PowerPoint presentations) are available through the DEQ Statewide TMDL Policy Committee website at: <http://www.deq.state.or.us/wq/tmdls/tmdlsPolicy.htm>.

Meeting Summary

Updates

The meeting began with a series of updates on water quality programs and litigation.

Mid Coast TMDL Status

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DEQ and the Local Stakeholder Advisory Committee (LSAC) are continuing to work on bacteria-listed areas and biocriteria impairments due to fine sediment. The Bacteria Technical Working Group (TWG) is in the information-gathering phase; no decisions about load reductions have occurred yet. The next meeting is scheduled for early March. The Sediment TWG is focused on a watershed analysis process and a literature review and is anticipated to meet in early spring in conjunction with the LSAC.

A group of stakeholders submitted a study and comments on the work the Bacteria TWG is doing with Load Duration Curves. The Bacteria TWG will take a first look at that information. If there are policy considerations they would be addressed first in the Local Stakeholder Advisory Committee and then, if appropriate, in the statewide group.

Coastal Zone Act Reauthorization Amendments (CZARA) Litigation

In prior years, EPA/NOAA granted conditional approval to Oregon's Coastal Nonpoint Source Pollution Control Program, but litigation challenged their ability to grant such conditional approval. As a result, a judge ordered EPA/NOAA to propose approval or disapproval of Oregon's program by November 15, 2013 and issue a final decision by May 15, 2014. On December 20, 2013, EPA/NOAA proposed disapproval of Oregon's program and opened a 90-day public comment period. DEQ encourages all stakeholders to submit comments by the March 20th deadline. Public comments should be sent by March 21 to: Joelle Gore, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713-3155, x177, or by email joelle.gore@noaa.gov.

A disapproval would have fiscal ramifications for DEQ and DLCD. For DEQ, it would mean a 30% annual reduction in grant funding received pursuant to section 319 of the Clean Water Act (currently ~\$2M per year). DLCD would see a one-time 30% reduction of the planning grant they receive from NOAA, which is about \$2M per year.

- A committee member asked about the likelihood of the State meeting the conditions of approval by May 15. DEQ feels they can meet the conditions of approval for septic system inspections and urban guidance, but is less certain about the State's ability to meet the conditions for approval for forestry measures.
- The impacts of the reduction in section 319 funds would impact grant-funded watershed protection projects and water quality staff that work on nonpoint source pollution control.

Please see NOAA's website for a docket with links to many related documents:
<http://coastalmanagement.noaa.gov/czm/6217/findings.html>

Temperature Standard Litigation

In April 2013, Oregon Federal District court invalidated a key provision of Oregon's temperature standard, the "natural conditions criterion," and ordered EPA to revise its approval of the provision by August 8, 2013. Pursuant to the order, on August 8, EPA issued a letter disapproving the Natural Conditions Criterion for temperature component of Oregon's water quality standards and the

statewide narrative natural conditions criteria. Also on August 8, EPA released a letter reviewing the state's antidegradation Internal Management Directive (previously approved by EPA in 2004).

Oregon has intervener status in the temperature standards litigation and, recently, so does a group comprised of Oregon Pulp & Paper Association, Oregon Forest Industries Council, Pacific Power, and PGE. The new group is called the Oregon Water Quality Standards Group.

Because this is in an area of active litigation, there is not much DEQ can say at this time. There are ongoing conversations that could lead to a settlement agreement among the parties and there is also a briefing schedule if a settlement agreement is not reached.

ODF Rulemaking

ODF met with the Board of Forestry in November to review the science on the applicability of alternatives to meet the protecting cold water standard of 0.3°C. The Board of Forestry used a stakeholder process that resulted in 16 different approaches to additional stream buffer requirements. ODF conducted a systematic review of small and medium streams in the Pacific Northwest near or adjacent to forest operations regarding shade and temperature and presented the results to the Board at their November meeting. They narrowed the approaches down to 3 alternatives: 1) a no-cut buffer, 2) a variable retention buffer, and 3) site specific alternative. They are putting together a model based on their RipStream Study dataset to evaluate the alternatives and will discuss with the Board of Forestry in April.

Restructuring at DEQ

Greg provided a brief overview of a restructuring at DEQ Headquarters that will be implemented starting February 1, 2014. While DEQ is replacing its three headquarters-based program divisions (air quality, land quality, water quality) with two new divisions – Operations and Environmental Solutions. These two divisions will focus on integrated policy and process solutions that advance environmental solutions with a priority of supporting local program delivery through the regional offices/programs. The restructuring isn't expected to have much effect on DEQ stakeholders. No changes are taking place in the regional offices, and the subject experts at headquarters are also largely unchanged.

Presentations

Revisiting the Temperature Standard

Jennifer Wigal presented DEQ's current thinking and trajectory for revisiting the temperature standard in light of the outcome of the temperature standard litigation. Information about DEQ's temperature standard can be found at <http://www.deq.state.or.us/wq/standards/temperature.htm>. Brief notes are captured below – there were no slides or other materials presented.

Jennifer reviewed several objectives and major considerations that DEQ has, in addition to the possible range of options for revisiting the standard. Objectives and major considerations include but are not limited to: a standard that is not administratively burdensome, addresses natural conditions within the bounds of Clean Water Act, is considered from a lifecycle perspective, is not

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too narrowly focused on temperature, strikes a balance between practical administration and legal risk, reflects available science, is approvable by EPA and NOAA, is consistent with Judge Acosta's NCC opinion, and is durable. Additionally, DEQ recognizes that revisiting the standard has impacts on permitting and TMDLs, and that changes to those regulations may be necessary to fit together with a new temperature standard.

The range of options that DEQ is considering varies from a surgical approach to remediate the issues with the Natural Conditions Criterion to a total overhaul of the temperature standard, acknowledging that the more original the approach is, the longer it will take.

Committee members variably expressed support for options at either end of the range. Some remembered the difficulty of the last temperature standard setting process. The public process on revisiting the standard will begin in fall of 2014 and is not constrained by the terms of any settlement agreement.

Ag Water Quality Program

Ray Jaindl (ODA) presented the current efforts of ODA's Ag Water Quality Program. His presentation is available at <http://www.deq.state.or.us/wq/tmdls/tmdlsPolicy.htm> Questions and comments:

- ODA and DEQ are coming to a better understanding about how to represent site potential and site capable vegetation for smaller order streams.
- Data for the two initial projects of their strategic initiative should be available next month.
- There may be some opportunities for agencies to do integrated, strategic monitoring, although agencies' different relationships with landowners (such as ODA's focus on compliance) may limit them.
- The second phase of ODA's strategic initiative is to feed the riparian info gleaned in phase 1 into area rules and plans, so landowners have a better idea of the conditions to achieve.
- There was a suggestion to look at incentives to entice landowners to be involved in monitoring efforts.

Water Quality Trading (Temperature)

Bobby Cochran (Willamette Partnership) provided an update on water quality trading in Oregon, the Northwest, and nationally. He discussed some of the accomplishments and some of the challenges with trading for temperature. Bobby discussed some of his current frustrations with trading—largely that uncertainty around TMDLs (e.g., natural conditions criteria) and the resulting slow pace of renewed NPDES permits is keeping implementation of water quality improvements from happening as quickly.

The Willamette Partnership is also looking at how to apply the tools of water quality trading beyond a compliance alternative for NPDES permit holders. Trading is a system to track performance, and can also help landowners, cities, and others communicate the good things they are doing to meet water quality goals.

His presentation is available at <http://www.deq.state.or.us/wq/tmdls/tmdlsPolicy.htm> Questions and comments:

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- How do you prevent perverse incentives, such as cutting down trees just to replant them again for credit? What protocols are in place to limit the possibility for these kinds of actions?
- Most buyers of water quality credits around the country are municipalities. There is some interest in and examples of trades with industry.
- Are there any markets for a broader set of ecosystem services (e.g., the collective biodiversity, water, or carbon value of riparian forest), rather than just temperature credits?

Policy Conversations

Prior to lunch, the facilitation team harvested ideas from the committee in order to shape the afternoon's discussion. The most interest was on revising the temperature standard, then implementing the water quality standard, and, to a lesser extent, measuring progress.

Revising the water quality standard

Committee members had a lively discussion of the merits of various approaches to revisit the temperature standard, from breaking down and rebuilding it to making it more dynamic to reflect the complexity of the natural environment, to narrowly revising the NCC to address Judge Acosta's opinion in order to address the issue quickly. There was some support that DEQ is considering the range of options in a thoughtful way.

Several stakeholder interests emerged the in the discussion:

- a need for certainty in the short and long term,
- a standard that is meaningfully and beneficially connected to biology,
- a standard that is connected to conditions on the ground so compliance is not a mystery.

One stakeholder suggested doing a watershed-scale experiment, or proof-of-concept, to test out a new approach from beginning to end to ensure it meets the interests and criteria outlined by DEQ and stakeholder groups and protects beneficial uses. Some participants observed that there may be some synergy among the interests of stakeholders that could help stakeholders come together to develop a creative approach.

Implementing the water quality standard

Several stakeholders agreed that is critical to establish measurable outcomes to support trading or incentives. Committee members discussed the merits and complications of introducing holistic approaches, trading, and incentives/opportunities to use trading on different land uses such as forestry.

- Some landowners and other members of the regulated community reiterated the need for certainty that their actions would result in compliance and positive impacts to fish. There was some additional support along these lines for achievable interim "goalposts" that could help balance flexibility and certainty.
- There was some disagreement in the room regarding various perceptions of the science of temperature and fish biology, which resulted in one suggestion to examine the science and seek some common understanding among stakeholders.

- Committee members and presenters talked about the amount of flexibility that DEQ has around standards under the Clean Water Act. Some interpret it narrowly and others think DEQ has more flexibility in setting standards to protect beneficial uses.

Meeting Format Feedback

Some attendees expressed that they appreciated the high level of engagement at this meeting, as well as the topic focus on temperature. DEQ remarked that they were happy with the level of information-sharing, rich discussion, and high participation. Committee members are invited to provide feedback on meeting formats to DEQ or Oregon Consensus anytime.

Next meeting

DEQ is aiming to hold the next Statewide TMDL Policy Advisory Committee meeting sometime in May and will be attentive to avoiding conflicts with other meetings that members would need to attend.

Potential topics include measuring progress and adaptive management. One stakeholder suggested discussing the turbidity standard rule revision as it relates to sediment TMDLs, though it remains to be seen whether the Statewide group is the right forum for that conversation.